

REMARKS

The Office Action dated November 29, 2004, has been received and reviewed.

Claims 1-10 were previously pending in the above-referenced application.

Claims 1-9 were withdrawn from consideration pursuant to an election that was made in response to a restriction requirement. Each of claims 1-9 has been canceled without prejudice or disclaimer.

Claim 10 has been amended to correct typographical errors therein.

New claims 11-26 have been added.

Reconsideration of the above-referenced application is respectfully requested.

Preliminary Amendment

Please note that a Preliminary Amendment was filed in the above-referenced application on March 4, 2004, but that the undersigned attorney has not yet received any acknowledgement that the Preliminary Amendment has been entered into the Office file for the above-referenced application. If, for some reason, the Preliminary Amendment has not yet been entered into the Office file, the undersigned attorney would be happy to provide the Office with a true copy thereof.

Claim Amendment

The amendments to claim 10 merely correct typographical errors in the claim. In particular, it is well known in the art that partial pressure refers to an amount of a particular substance (*e.g.*, carbon dioxide) in a gas; thus, reference to partial pressure of carbon dioxide in blood was incorrect. The specification of the above-referenced application clearly indicates that the "partial pressure" that is referred to in claim 10 refers to the partial pressure of carbon dioxide within the alveoli of the lungs of a subject. *See, e.g.*, paragraph [0072]. Therefore, it is respectfully submitted that the amendments to claim 10 do not introduce new matter into the claim and do not narrow the scope of the claim. Further, claim 10 is entitled to the full scope of equivalents available under the law.

Obviousness-Type Double Patenting Rejection

Claim 10 stands rejected under the judicially created doctrine of obviousness-type double patenting for reciting subject matter which is allegedly unpatentable over the subject matter recited in claim 8 of U.S. Patent 6,648,831, in view of teachings from U.S. Patent 6,251,082 to Rayburn.

A terminal disclaimer and the appropriate fee are being filed herewith, in compliance with 37 C.F.R. § 1.321(b) and (c), to obviate the obviousness-type double patenting rejection, thereby expediting prosecution of the above-referenced application and avoiding further expense and time delay. The filing of a terminal disclaimer in the above-referenced application should not be construed as acquiescence of the propriety of the obviousness-type double patenting rejection.

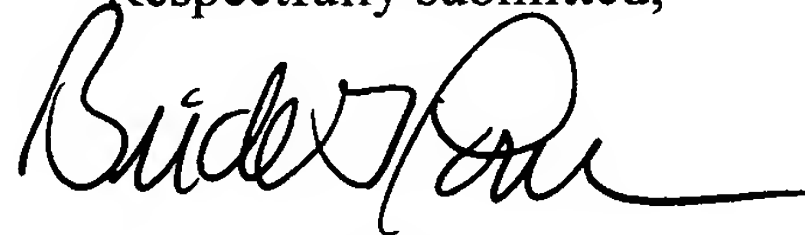
New Claims

New claims 11-26 have been added. New claims 11-20 depend directly or indirectly from claim 10 and recite subject matter that is described in the specification, for example, at paragraphs [0064] through [0083]. These paragraphs also provide support for the subject matter recited in new independent claim 21, claim 22 depending therefrom, and new independent claim 23 and its dependent claims 24-26. For these reasons, it is respectfully submitted that none of new claims 11-26 introduces new matter into the above-referenced application.

CONCLUSION

It is respectfully submitted that each of claims 10-26 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,



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Date: February 28, 2005

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